

## **Guidance for Medicare Advantage Medical Savings Account (MSA) Demonstration Plans**

### **Legislative Authority**

Q: What is the legislative authority for CMS to offer a Medicare Advantage (MA) Medical Savings Account (MSA) demonstration?

A: Sections 1851(a)(2)(C) and 1859(b)(3) of the Social Security Act (the Act) authorize Medicare Advantage organizations to offer MSA plans to Medicare beneficiaries. CMS is establishing this demonstration under section 402(a)(1)(A) of the Social Security Amendments of 1967, 42 U.S.C. 1395b-1(a)(1)(A), which authorizes the Secretary to conduct demonstrations designed to test whether changes in methods of payment or reimbursement would have the effect of increasing the efficiency and economy of those programs without adversely affecting the quality of services. The MA MSA demonstration design waives certain MA MSA plan requirements under sections 1859(b)(3), 1853(e), and 1854(c) of the Act.

### **Eligibility**

Q: Who is eligible to enroll in the Medicare Advantage (MA) Medical Savings Account (MSA) Demonstration plans?

A: Anyone entitled to Part A and enrolled in Part B is eligible unless one of the following applies: beneficiaries with ESRD, Medicaid eligible individuals, beneficiaries who have elected to receive Medicare hospice care, individuals covered under FEHBP, VA, or military health benefits and the working aged. The beneficiary must also provide assurances that they will reside in the United States for at least 183 days during the year.

### **Differences Between MSA Demonstration Plans and Regular MSA Plans**

Q: What are the key differences between the MA MSA Plan Demonstration Program and the Regular MA MSA Program?

- A: Several important differences exist between a regular MA MSA plan and an MA MSA Demonstration plan. Under the MA MSA Plan Demonstration Program, the high-deductible health plan (HDHP) may offer:
1. A cost-sharing structure for original Medicare benefits in which there is a deductible at or above a minimum amount, cost-sharing after the deductible is met, and a separate limit on out-of-pocket expenditures. The regular MA MSA plan option does not allow cost-sharing after the plan deductible is met, except for cost sharing related to optional supplemental benefits. In the demonstration, full coverage of some preventive services is allowed before the deductible is met. The regular MA MSA plan does not allow for coverage of preventive services before the deductible is met.
  2. For network HDHPs under the demonstration, there may be differential cost-sharing for in-network versus out-of-network services, including different out-of-pocket caps for in-

and out-of-network services. The HDHP may recognize only the in-network level of cost-sharing for services received out-of-network in counting costs toward the deductible. The regular MA MSA plan does not allow cost-sharing after the deductible is met.

In addition, under a regular MA MSA plan the service area could be a local service area. Under the demonstration, the service area of the MSA product must consist of at least an entire State or territory. The benefit package or packages offered by an organization must be uniform throughout the State and available in the entire State. (In the case of the District of Columbia, an organization must also include in its service area at least one contiguous State.)

Other features of the MA MSA Plan Demonstration are:

3. CMS is soliciting proposals for ways in which deposits to beneficiary accounts can be greater for beneficiaries with higher expected healthcare costs. For example, an organization could propose the creation of MSA deposit tiers (where “higher risk” tiers are assigned higher deposits) and a method for assigning enrollees to a tier. The regular MA MSA plan requires that the MSA deposit be uniform for all members of the MA MSA plan.
4. Under the MA MSA demonstration an employer may offer only an MA MSA demonstration plan to the employer group market and not to the individual market. Ordinarily, CMS would approve an employer group-only plan when the organization also offers an MA MSA plan product in the individual market in the same area in which the employer plan is offered.

### **Legal Entity Requirements**

Q: Must the entity offering the MA MSA Demonstration plan be a risk-bearing entity?

A: Yes. Section 1855(a)(1)(A) of the Social Security Act states that an MA organization must be organized and licensed under State law as a risk-bearing entity eligible to offer health insurance or health benefits coverage. All organizations intending to participate in the demonstration must be approved by CMS as a Medicare Advantage Organization.

### **Part D Coverage**

Q: Can an MA MSA Demonstration member have a Part D prescription drug plan (PDP) in addition to an MSA since MA MSA plans are not allowed to offer Part D prescription drug coverage?

A: Yes. Such an individual could enroll in a PDP.

### **Beneficiary Deposit Issues**

Q: Does a beneficiary enrolling mid-year via an initial coverage election period (“aging-in” to Medicare mid-year) have to pay the entire annual deductible? Or is the deductible pro-rated, as CMS will do with the deposit?

A: CMS will allow insurers to decide how to deal with a partial-year enrollee. For example, an insurer could include a “carry-over” rule where bills incurred during a specified period at the end of a year could be carried over to the following year and applied to the next year’s MSA deductible.

Q: What happens to dollars in a Medicare Demonstration Medical Savings Account (MSA) if a member disenrolls and moves to another MA plan?

A: The account is the property of the member, subject to CMS’ rules for disenrollment during a contract year. Any funds in the account from prior contract years remain the property of the member. However, under 42 CFR § 422.314(c) (3), if a beneficiary’s coverage ends during the year, CMS is required to recover the amount of the CMS deposit that corresponds to the deposit made for the remaining months of that year. CMS is exploring ways to simplify the recoupment process and welcomes proposals for simplification.

Q: What will happen to a beneficiary who receives all their money in January and disenrolls on March 1? How will CMS recover the funds?

A: As noted in our prior response, deposit amounts associated with months after beneficiary disenrollment are required to be recovered by CMS. Under this scenario, deposit amounts associated with the months of March through December would need to be recovered by CMS. However, CMS is exploring ways to simplify the recoupment process and welcomes such proposals.

### **Enrollment & Disenrollment**

Q: Would dual-eligibles (individuals entitled to both Medicare and Medicaid) be able to enroll in an MA MSA Demonstration plan?

A: No. Individuals eligible for Medicaid, including those eligible only for Medicare cost-sharing under Medicaid State plans, are not eligible to elect an MA MSA Demonstration plan.

Q: Do the regular MA MSA enrollment periods and limitations apply to MA MSA Demonstration plans?

A: The following special rules for MA MSA plans would also apply to the MA MSA demonstration plan enrollments:

Individuals may enroll in MA MSA plans only during their initial coverage election period (ICEP) or during the annual election period (AEP). Individuals may disenroll only during the AEP or if a Special Election Period (SEP) applies.

In addition, an individual is not eligible to elect an MA MSA plan if:

s/he is eligible for or covered under other health benefits programs, including Federal Employee Health Benefits, Department of Veteran Affairs or Department of Defense;

s/he is eligible for Medicare cost-sharing under Medicaid State plans;

s/he receives health benefit coverage other than what is permitted under 42 CFR §422.104(b) that covers all or part of the annual deductible under the MA MSA plan;

s/he has elected to receive Medicare hospice care at the time of election; and/or

s/he is in ESRD status.

An individual who elects an MA MSA plan during an annual election period and has never before elected an MA MSA plan may revoke (i.e. “cancel”) that election, but must do so by December 15 of the year in which s/he elected the MA MSA plan – before the MSA plan coverage is effective.

Q: If an MA MSA Demonstration plan discovered through the administration of the working-aged survey that a member had primary insurance could/should they disenroll the member?

A: Organizations planning to offer MA MSA Demonstration plans are reminded of the importance of verifying critical eligibility information such as the presence of other health care coverage that would not permit MSA plan enrollment. However, if it is later determined that an individual was not eligible for the MA MSA Demonstration plan at the time s/he enrolled, the enrollment is invalid and must be cancelled retroactively to the original effective date. Subsequent entitlement (through marriage or reemployment) to primary health insurance coverage would be a terminating event.

### **Plan Designs**

Q: Are there any restrictions on the service areas of MA MSA Demonstration plans?

A: Organizations that intend to offer an MA MSA product under the demonstration must offer the product in a service area of no less than an entire State or territory. Organizations that offer a product in the District of Columbia must also offer the product in a contiguous State. In addition, the benefit package must be uniform throughout the entire state.

### **MSA Demonstration Application and Bidding**

Q: Will MAOs need to submit an application and bids for MA MSA Demonstration Plans?

A: Yes.

### **The Application**

We have posted the MA MSA plan demonstration framework as well as the MA MSA application on our website at <http://www.cms.hhs.gov/MedicareAdvantageApps/>. The framework outlines specific parameters for design flexibilities. The MA MSA application must be completed and the benefit design must stay within the boundaries of the MA MSA plan demonstration framework. The applicant must provide an operational discussion of the following:

- Product offering;
- Deposit calculations;

- Recovery policy for the current-year deposit, and procedures for members who are disenrolled from the plan before the end of the contract year. (Note that disenrollment may occur only for the reasons such as death or moving out of the service area as specified in section 1851(e)(5)(B) of the Act);
- Items and services to be counted toward the member's deductible;
- Whether a Prescription Drug Plan will be offered by your organization and marketed to potential MSA enrollees;
- Policy and procedures on portability of the member's account;
- Use of networks and whether/how cost sharing and the member out-of-pocket maximum will vary in-network versus out-of-network;
- Service area for product offering and whether it is individual and/or employer group; and
- Any other aspects making the product offering different from the statutory requirements of an MSA plan and as allowed under the framework.

Medicare Advantage organizations interested in participating in 2007 must submit a complete MA MSA application, which is available on the CMS website at <http://www.cms.hhs.gov/MedicareAdvantageApps/>, no later than July 21, 2006.

#### The Bid

An MAO will need to submit a bid for a MA MSA Demonstration Plan on or before August 10, 2006. The MA MSA Plan Demonstration Bid Pricing Tool will be made available on the CMS website in June.

Plan A/B bid. Like other local MA plans, the MA MSA Demonstration plan A/B bid (called the "monthly MSA premium" in statute) represents the organization's monthly revenue requirements for coverage of original Medicare benefits in a service area, except that the MA MSA plan bid is for a high deductible plan. The MA MSA Demonstration plan A/B bid reflects the expected risk profile of plan enrollees.

Benchmark. Per Sec. 1853(j), the local MA standardized A/B benchmark is based on capitation rates for a geographic area (county). The benchmark calculation for MA MSA plans is the same as for other local MA plans: the weighted average of county capitation rates in the plans' service area, weighted by plan projected enrollment per county.

The MA organization offering the MSA Demonstration plan will provide in the bid pricing tool the expected plan average risk score that informed determination of the allowed costs for the bid. The plan A/B benchmark is then calculated using the same formula as for other local MA plans: the plan-level projected risk score multiplied by the standardized A/B benchmark.

An MA MSA Demonstration plan cannot charge a basic beneficiary premium (see Section 1854(b)(1)(B) of the Act), and is not permitted to provide mandatory supplemental benefits (see Section 1852(a)(3)(A)). An MA MSA Demonstration plan may not offer Part D coverage, although MA MSA plan enrollees may enroll in a PDP. Plans may design a stand-alone PDP product that would be attractive to enrollees in the demonstration product, while also being offered to the general Medicare population. For employer-group only plans, the stand-alone PDP may also be an employer-group only product.

Any non-Medicare-covered benefits must be offered as optional supplemental benefit(s). The MA Organization would submit a bid amount for these supplemental benefits as part of the August 10, 2006, bid submission.

Q: Are MA MSA demonstration Plans included in the MA regional plan benchmark?

A: No. MA MSA Demonstration Plans are offered as local MA plans, not regional plans. Additionally, MA MSA plans, both regular and demonstration plans, cannot offer Part D benefits. Therefore, the computation of the national average Part D monthly bid amount in section 1860D-13(a)(4) is also not applicable to MA MSA plans.

### **Trustee/Banking Requirements**

Q: What banking requirements are there for MA MSA Demonstration Plans?

A: Trustees must meet the requirements to serve as an MSA trustee under IRS rules. 42 CFR §422.314(b) requires an entity that acts as a trustee for an MSA to register with CMS; certify it is a licensed bank, insurance company, or other entity qualified under sections 408(a)(2) and (h) of the IRS code of 1986; and it must agree to comply with section 138 of the IRS code.

### **Marketing Issues**

Q: Will MAOs offering MA MSA Demonstrations plans complete the PBP?

A: Yes, MAOs offering MA MSA Demonstration Plans will be able to access all Sections of the PBP and Notes. MA MSA plans must complete Sections A, B, C-Foreign V/T (if applicable) and D of PBP.

Q: What information will be input on the PBP?

A: MA MSA Demonstration plans will input all in-network, and if applicable out-of-network benefit information. (This may only amount to recognizing a "discount" or reduced costs when seeing network providers.) Balance billing and other pre/post deductible information can be included in Notes fields, where appropriate.

Q: Were the exclusive sentences on the Summary of Benefits developed for MA MSA Demonstrations Plans?

A: No, exclusive MA MSA sentences are not in the Summary of Benefits.

Q: Will MA MSA Demonstration Plan information be included in the Medicare Personal Plan Finder (MPPF)?

A: Yes, MA MSA Demonstration Plan information will be included in the MPPF for the Medicare Advantage plans that offer MSA demonstration plans.

Q: Will CMS be providing model language for the EOC and enrollment application?

A: CMS does not intend to develop a separate model EOC for MA MSA Demonstrations. MA MSA Demonstrations are local plans and are treated in the same manner as other MA plans. MAOs offering MA MSA demonstration plans should use the model EOC document located on the CMS HealthplanWebsite, and modify it accordingly to reflect the way plan benefits will work in the MSA demonstration plan being offered.

### **Employer and Union Groups**

Q: Can MAOs offer MA MSA Demonstration plans to employer and union groups?

A: Yes. An MAO can offer MA MSA Demonstration plans in the group market exclusively and are not required to offer non-group local MA MSA coverage in the same state in which it offers such group coverage. A group MA MSA Demonstration plan is generally subject to the same requirements as non-group plans; although, under Sec. 1857(i) of the Social Security Act, CMS has the authority to waive or modify requirements that may hinder the design of, the offering of, or the enrollment in an employer or union-sponsored MA plan. Guidance papers outlining MA waivers granted for 2006 can be found at <http://www.cms.hhs.gov/EmpGrpWaivers/>. Some of the waivers include modification of the service area requirement as outlined above, waiver of the minimum enrollment requirement, and modification of the marketing and dissemination rules. Additional waivers can be requested and will be reviewed on a case by case basis.

Every MAO that wishes to provide a group MA MSA Demonstration plan in 2007 must submit by the application deadline a Medicare Advantage Initial Contract for MSA Plans application, along with a 2007 Application for MA Organizations to Offer New Employer/Union-Only Group Waiver Plans (EGWPs), which can be found at <http://www.cms.hhs.gov/EmpGrpWaivers/>. The timeline for MA MSA demonstration group plans on application and bid submissions will be the same as for non-group MA MSA demonstration plans. Any questions on the group MA MSA Demonstration application process can be submitted to the Employer Policy and Operations Group (EPOG) at CMS. The appropriate contact at EPOG for information and questions is Jim Mayhew, Director of the Policy Division, who can be reached at [james.mayhew@cms.hhs.gov](mailto:james.mayhew@cms.hhs.gov).

Q: Can a retiree enroll in an MA MSA Demonstration plan?

A: Yes, regular MA rules apply. Retirees can enroll into an MA MSA Demonstration plan.

Q: Can the employer pay the optional supplemental premiums and/or premiums for any of the policies under §422.104(b)?

A: Yes, employers can pay the premiums of the supplemental plans permitted under §422.104(b).

**Additional guidance on the regular MA MSA program was released previously and can be located on the CMS Web page at:**

**[http://www.cms.hhs.gov/MedicareAdvantageApps/Downloads/2007\\_MSA\\_Useful\\_Information.pdf](http://www.cms.hhs.gov/MedicareAdvantageApps/Downloads/2007_MSA_Useful_Information.pdf)**